S.B. CIVIL WRIT PETITION NO.3530/07
Sunil Mehta & Anr. Vs. Surendra Singh Menta & Ors.

Date of order : 26/7/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri L.L. Jain for the petitioners.
Shri G.K. Garg for the respondents.

The petitioner who is plaintiff in the civil suit filed before the Additional District Judge No.4, Kota for declaration and injunction has in this writ petition challenged two orders dated 30th March, 2007 and 28th April, 2004. By the first order, his application under Order 11 Rule 12 and 14 CPC for summoning the records of the firm M/s. J.N. Marshall & Co, Kota of whose the plaintiff no.2 was the partner in the past and the defendants are the present partners was rejected by the trial court.

By another order dated 28.4.2007 his application for impleading the aforesaid firm as party respondent was rejected.

I have heard Shri L.L. Jain, the learned counsel for the petitioners and Shri G.K. Garg, the learned counsel for the respondents.

Shri L.L. Jain, the learned counsel for the petitioners argued that the suit which was filed by the plaintiff was based on the premise that the property in dispute was HUF property and plaintiff no.2 being son of K.M. Mehta, who had purchased the said property out of his self earned money and also from the money which he derived by inheritance, is entitled to a share therein. Shri K.M. Mehta never partitioned the property and died intestate and therefore all co-

partners are entitled to have their individual share in the property by partition. In order to prove that the land situated at Kota measuring 44 bighas was mainly a family property, entire record of the firm was required to be requisitioned. It is argued that part of this property was sold and out of the sale proceeds thereof, another landed property was purchased at Jodhpur and the plaintiff was entitled to his share in that property too. The learned trial court however illegally rejected the application. It was argued that the application for impleading the said firm as party has also been rejected by citing wrong reasons because originally when the application under Order 11 Rule 12 and 14 was filed, records were sought to be

requisitioned from defendant no.2 and when the firm itself would have been impleaded as party that would have facilitated the summoning of records so as to arrive at the conclusion. Shri L.L. Jain, in support of his arguments has placed reliance on the judgments of the Hon'ble Supreme Court in Shri M.L. Sethi vs. Shri R.P. Kapur, AIR 1972 SC 2379 and Amit Kumar Shaw & Anr. Vs. Farida Khatoon & Anr., (2005) 11 SCC 403.

Shri G.K. Garg, the learned counsel for the respondents opposed the writ petition and argued that the property in question was even originally purchased in the name and from the funds of the firm M/s. J.N. Marshall and Co., Kota and that the changes in the composition of the partnership firm had taken place from

time to time. When the petitioner retired from the firm, he was given his complete due share and made owner of M/s. Indian Silica and Minerals Corporation. In this connection, Shri G.K. Garg cited the affidavit of the petitioner dated 25.6.1979 wherein the petitioner no.2 while retiring as a partner from firm M/s. J.N. Marshal & Company had stated that he shall not bear any profit or loss liability due to any individual or firm or any other corporate body in M/s. J.N. Marshall & Company, Kota and that he shall have no concern from J.N. Marshall & Company w.e.f. 30.6.1979. It was argued that M/s. Indian Silica & Minerals Corporation was also a family firm and the properties thereof were given to the petitioner as his share in the family

business. The petitioner could not again claim share from the other properties of the firm/family. It was submitted that the evidence of the plaintiff was closed and thereafter the evidence of the defendants was also closed and then thereafter, matter was fixed for evidence of the plaintiff in rebuttal on 11.5.2007. At that stage the petitioner filed two applications when the matter was riped for final disposal. The applications were filed with a view to delaying the proceedings. It is therefore prayed that the writ petition be dismissed.

I have given my thoughtful consideration to the rival submissions and perused the material on record.

The learned trial court has while

rejecting the application under Order 11 Rule 12 and 14 CPC has made a detailed analysis of the facts and has noted that the petitioner did not set up the case in the originally filed suit that the properties in question were the property of HUF, nor did he ask for any partition in the properties of M/s. J.N. Marshall & Co. No details have been given as to what co-relation would the records of the firm would have with the properties of which partition is asked for. Even otherwise, on perusal of the application, I find that the prayer made is as vague as it could be. Asking for production of any record from the date of formation of firm till now without making specific reference to the nature and description of the record which is required to be

submitted and the specific period in regard to which the records were to be summoned cannot be appreciated. No relief was as such prayed for against the firm. Just because the trial court had earlier declined to requisition the records from defendant no.2 who was partner of the firm, the firm could not be impleaded as a party to facilitate the summoning of records. The learned trial court has given cogent reasons for not impleading the firm as party.

I have respectfully gone through the judgments cited by Shri L.L. Jain, the learned counsel for the petitioners. In M.L. Sethi, supra, Hon'ble Supreme Court held that order for discovery cannot be said to be without jurisdiction merely because it was passed on an application

for discovery not specifying the documents sought to be discovered. The party seeking discovery can come to know of specific documents only when the other side files the affidavit of documents in reply to the order of discovery. In the present case the fact situation is entirely different. It is not a case that the petitioners have come to know of specific documents only when the defendants herein files the affidavit of documents in reply to the order of discovery. Besides, the application is absolutely vague as to which document and with reference to which period it is to be summoned. The aforesaid judgment therefore could not be of any help to the petitioners. Another judgment in Amit Kumar Shaw, supra, was a case where their

Lordships observed that the object of Order 1 Rule 10 is to discourage contests on technical pleas and to save honest and bona fide claimants from being non-suited. It was held that the power to strike out or add parties can be exercised by the court at any stage of the proceedings. There can be no contest with this proposition of law but in the present case, rejection of the application for impleadment has not resulted in bona fide and honest claimants from being non-suited. The firm is not a claimant herein and nor has the firm applied to become a party. It is the plaintiff who wants the firm to be impleaded as party and that too when he has not claimed any relief against the firm as such. The aforesaid judgment also

does not help the petitioners.

In view of what has been discussed above, neither of the impugned orders suffers from any error apparent on the face of record so as to warrant interference by this Court in exercise of its power of judicial review under Article 226 & 227 of the Constitution of India. It is however made clear that anything discussed and said herein, would not affect interest of the parties in any way during trial and at the time of final disposal of civil suit in question.

The writ petition, which lacks in merits is, therefore, dismissed though with no order as to costs.

(Mohammad Rafiq),J.

RS/-